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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:)	Jointly Administered Under:
)	No. 04-00757-W11
)	
METROPOLITAN MORTGAGE &)	Chapter 11
SECURITIES CO., INC.,)	
)	FINDINGS OF FACT AND
Debtor.)	CONCLUSIONS OF LAW RE:
_____)	ORDER BARRING THIRD-
)	PARTY CLAIMS FOR
In re:)	CONTRIBUTION OR
)	INDEMNITY
SUMMIT SECURITIES, INC.,)	
)	
Debtor.)	
_____)	

THIS MATTER came on regularly for consideration upon the Motion filed
October 23, 2006, by Metropolitan Mortgage & Securities Co., Inc.
("Metropolitan") and Summit Securities, Inc. ("Summit"), the Metropolitan

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE ORDER BARRING CLAIMS-1

SUSMAN GODFREY L.L.P.
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1 Creditors' Trust, and the Summit Creditors' Trust (the "Trusts") for entry of an
2 order permanently barring persons and entities who are not parties to a Settlement
3 Agreements entered into by the Debtors and a proposed class of purchasers of the
4 Debtors' securities in *In re Metropolitan Securities Litigation*, No. CV-04-025-
5 FVS (E.D. Wash.) (the "Class Action") from asserting, commencing, or continuing
6 certain claims for contribution and indemnity against the following parties to the
7 Settlement Agreement: Robert Bruce J. Blohowiak, B. Elaine Hoskin, Gary D.
8 Brajcich, the Estate of Harold W. Erfurth, Reuel C. Swanson, Irv Marcus, William
9 A. Smith, William D. Snider, John T. Trimble, Erik E. Skaggs, and Robert A. Ness
10 (collectively hereinafter referred to as "Settling Directors and Officers"). Having
11 made the findings of fact and conclusions of law set forth herein pursuant to
12 Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy
13 Rule 9014, with findings of fact to be construed as conclusions of law when
14 appropriate, and with all capitalized terms not otherwise defined herein to be
15 defined as set forth in the Settlement Agreement filed in connection with the
16 Motion;
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23 NOW THEREFORE, the Court makes the following Findings of Fact:

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25 1. In compliance with Wash. Rev. Code § 4.22.060(1), the Debtors and
26 Trusts properly transmitted notice of the motion for entry of the proposed bar order
27 on all known persons with potential claims for contribution and indemnity against
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1 the Settling Directors and Officers and the Additional Released Parties (as that
2 term is defined in the Settlement Agreement).

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4 2. A reasonable opportunity to object and be heard with respect to the
5 Motion and the relief requested therein has been afforded to all persons served with
6 notice.
7

8 3. The Court has considered the reasonableness of the Settlement
9 Agreements in accordance with the requirements of Wash. Rev. Code §
10 4.22.060(1).
11

12 4. The Court has considered the factors applicable under Bankruptcy
13 Rule 9019 in assessing the fairness, reasonableness and adequacy of the Settlement
14 Agreement. In particular, the Court has considered:
15

- 16 • The probability of success in the litigation – the complex facts
17 underlying the claims and the defenses that would be raised make this
18 factor weigh in favor of finding the settlement is reasonable;
- 19 • The difficulties to be encountered in collection of the judgment – the
20 record establishes that settlement at this juncture allows recovery of
21 available insurance proceeds that would be exhausted through
22 continued litigation and that recovery from other assets is unlikely;
- 23 • The complexity of the litigation and the expense, inconvenience, and
24 delay – each of these factors militates in favor of approving the
25 settlement as reasonable, particularly the balance of an assured
26 recovery now as against uncertain recovery after lengthy proceedings;
- 27 • The paramount interest of the creditors and a proper deference to their
28 reasonable views – the Court notes that the Creditors' Trusts have
previously approved the Settlement Agreement and seek approval of
the proposed bar order.

1 5. The Court has also considered the factors applicable under RCW
2 4.60.060 in assessing the fairness, reasonableness and adequacy of the proposed
3 settlement. In particular, the Court has considered:
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- 5 • The releasing person's damages and the merits of the releasing person's
6 liability theory – the facts concerning both the amount of damages and the
7 elements of the underlying claim against the Settling Directors and Officers
8 are complex and contested, so this factor weighs in favor of reasonableness.
- 9 • The merits of the released person's defense theory – the Settling Directors
10 and Officers would have vigorously asserted defenses as to which the facts
11 are complex and contested, so this factor weighs in favor of reasonableness.
- 12 • The released person's relative faults – the Settling Directors and Officers,
13 and each of them, have been the subject of investigations by the court-
14 appointed Examiner and the Debtors and have not been identified as having
15 received any improper benefits from their affiliation with the Debtors, so
16 this factor weighs in favor of reasonableness.
- 17 • The risks and expenses of continued litigation – as noted above, continued
18 litigation would be complex, lengthy and expensive with significantly
19 uncertain outcome.
- 20 • The released person's ability to pay – as noted above, the settlement enables
21 the Trusts to recover from available insurance proceeds, which form the best
22 source of recovery.
- 23 • Evidence of bad faith, collusion, or fraud – the record before the Court
24 amply demonstrates that this settlement was the result of good faith, arm-
25 length and contested negotiations conducted by qualified counsel.
- 26 • The extent of the releasing person's investigation and preparation of the case
27 – Debtors and Trusts have had the benefit of an extensive investigation
28 conducted by the Examiner appointed by this Court as well as access to the
relevant records and have hired qualified counsel to assess the merits of the
claim.
- The interests of the parties not being released – the non-released parties have

1 not objected to the settlement and their interests are being protected through
2 the judgment reduction mechanisms included in this Order.

3 6. The Court's consideration of these factors leads it to conclude that the
4 proposed settlement was entered into in good faith and is a fair, adequate and
5 reasonable settlement of the released claims.
6

7 WHEREFORE, having entered the foregoing Findings of Fact, the Court
8 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the
9 following Conclusions of Law constitute Findings of Fact, they are adopted as
10 such.
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13 1. The Court has subject matter jurisdiction over the claims being
14 released against the Settling Directors and Officers and the Additional Released
15 Parties and the authority to determine the reasonableness of the settlement pursuant
16 to Bankruptcy Code §§105 and 157 and Bankruptcy Rules 7016 and 9019.
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18 2. The factors considered by the Court in assessing the fairness,
19 reasonableness and adequacy of the proposed settlement are factors applicable
20 under Bankruptcy Rule 9019.
21

22 3. The factors considered by the Court in assessing the fairness,
23 reasonableness and adequacy of the proposed settlement are factors applicable
24 under RCW 4.60.060.
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26 4. The Settlement Agreement was entered into in good faith and is a fair,
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adequate and reasonable settlement of the released claims and is sufficient to discharge the Settling Directors and Officers and the Additional Released Parties from all such claims. The Settling Directors and Officers and the Additional Released Parties are entitled to be discharged from liability from third parties for contribution or indemnification or any other claims where the claimant's injury is liability to the Debtors or the Trusts as provided under RCW 4.60.060 or any comparable statute or common law of any other state.

5. The Debtors and Trusts have shown under applicable law that an Order should be entered providing that all persons or entities who are not parties to the Settlement Agreement are permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim against the Settling Directors and Officers or the Additional Released Parties, however styled, whether legal or equitable, known or unknown, whether for indemnification or contribution or otherwise denominated (including claims for breach of contract or misrepresentation), where the claimant's injury is the claimant's liability to the Debtors or the Trust and where the claim is based on, arises out of or relates to any claims released by the Debtors and the Trusts pursuant to the Settlement Agreement, including, without limitation, any claim in which such non-settling party seeks to recover from any of the Settling Directors and Officers or the Additional Released Parties (1) any amounts that such non-settling party has paid,

1 become liable to pay, or may become liable to pay in any proceeding commenced
2 by the Debtors or the Trusts against such non-settling party based on, arising out
3 of, or relating to claims they have released pursuant to the Settlement Agreement,
4 or (2) any costs, expenses, or attorney fees that a non-settling party has incurred or
5 may incur in defending against any such claim asserted against it by the Debtors or
6 the Trusts (hereafter "Barred Claims"), and further that all Barred Claims should
7 be extinguished, discharged, satisfied and made unenforceable.
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11 6. Because non-settling parties are barred from asserting any Barred
12 Claims against the Settling Directors and Officers and the Additional Released
13 Parties, any final verdict or judgment entered against non-settling parties by the
14 Debtors or Trusts, based on claims that would have given rise to a right by such
15 non-settling parties to assert Barred Claims but for the terms of this Order, should
16 be reduced as determined by and provided for under the law applicable to such
17 Barred Claims.
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21 7. If the Debtors or the Trusts obtain a settlement, judgment or verdict
22 against a person based upon, arising out of, or relating to the claims they have
23 released pursuant to the Settlement Agreement, and, notwithstanding the bar order
24 which this Court has agreed to enter, that person obtains a recovery against a
25 Settling Director or Officer or an Additional Released Party on a Barred Claim for
26 (1) amounts that person has become liable to pay or may become liable to pay to
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28

1 the Debtors or the Trusts and/or (2) any costs, expenses or attorney fees that person
2 has incurred in defending such claims, then the Debtors or Trusts should reduce or
3 credit any judgment or settlement against that person by the amount of that
4 person's recovery against the Settling Director or Officer or the Additional
5 Released Party, which amount should then be credited to the person's recovery
6 against the Settling Director or Officer or the Additional Released Party.
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9 8. If a Barred Claim is asserted against a Settling Director or Officer or
10 an Additional Released Party in a lawsuit or arbitration proceeding in which
11 neither the Debtors nor the Trusts are a party, it is appropriate to require that such
12 Settling Director or Officer or Additional Released Party provide the Debtors and
13 the Trusts with notice of the Barred Claim in writing sent to:
14
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17 Maggie Lyons
18 Metropolitan Creditors Trust
19 Summit Creditors Trust
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21 Spokane Valley, WA 99216

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23 Susman Godfrey, LLP
24 1201 Third Ave., Suite 3800
25 Seattle, WA 98101

26 It is appropriate to require that such notice be provided not later than thirty (30)
27 days after the time when the Settling Director or Officer or Additional Released
28 Party learns of the assertion of the Barred Claim against him or her. Compliance

1 with this paragraph, where applicable by its terms, shall be a condition to the
2 obligations of the Debtors and Trusts as described in Paragraph 7 above.
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4 9. The proposed bar order should be entered in the form attached to the
5 Debtors' and Trusts' Motion as Exhibit B.
6

7 Presented by:

8 SUSMAN GODFREY L.L.P.
9

10 /s/ Parker C. Folse, III
11 Parker C. Folse, III, WSBA No. 24895
12 Attorney for Metropolitan Mortgage &
13 Securities Co., Inc., the Metropolitan
Creditors' Trust, Summit Securities, Inc.,
and the Summit Creditors' Trust

14 DAVIDSON ❖ MEDEIROS
15

16 /s/ Barry W. Davidson
17 Barry W. Davidson, WSBA No. 07980
18 Attorneys for Metropolitan Mortgage &
Securities Co., Inc. and the Metropolitan
Creditors' Trust
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A handwritten signature in cursive script, reading "Patricia C. Williams", is written over a horizontal line.
Patricia C. Williams
Bankruptcy Judge

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE ORDER BARRING CLAIMS-9

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